

ESTTA Tracking number: **ESTTA691980**Filing date: **08/26/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	ABG Collective LLC
Granted to Date of previous extension	08/26/2015
Address	100 West 33rd Street New York, NY 10001 UNITED STATES

Correspondence information	ABG Collective LLC 100 West 33rd Street New York, NY 10001 UNITED STATES gina.durham@dlapiper.com, tamar.duvdevani@dlapiper.com, Kerry.O'Neill@dlapiper.com, Tmdocket@dlapiper.com
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Applicant Information

Application No	86459048	Publication date	04/28/2015
Opposition Filing Date	08/26/2015	Opposition Period Ends	08/26/2015
Applicant	ATMOS NATION L.L.C. 4800 SW 51st Street, STE: 106 Davie, FL 33314 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Electronic cigarettes; Electronic cigars; Electronic hookahs; Electronic smoking pipes; Mechanical electronic cigarettes; Smokeless cigarette vaporizer pipe

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	1511840	Application Date	12/03/1986
Registration Date	11/08/1988	Foreign Priority Date	NONE
Word Mark	AIRWALK		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1986/09/00 First Use In Commerce: 1986/09/00 ATHLETIC AND EXERCISE SHOES

U.S. Registration No.	2109810	Application Date	02/28/1996
Registration Date	10/28/1997	Foreign Priority Date	NONE
Word Mark	AIRWALK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1996/09/01 First Use In Commerce: 1996/09/01 outerwear, namely coats, jackets, hats, shirts, pants, shorts, socks, and[belts]; shoes, namely mountain bike shoes, hiking boots, and snowboard boots Class 028. First use: First Use: 1996/08/01 First Use In Commerce: 1996/08/01 snowboards and snowboard bindings		

U.S. Registration No.	2314004	Application Date	11/25/1998
Registration Date	02/01/2000	Foreign Priority Date	NONE
Word Mark	AIRWALK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1992/01/00 First Use In Commerce: 1992/01/00 FOOTWEAR, NAMELY CASUAL SHOES		


U.S. Registration No.	3902941	Application Date	02/01/2010
Registration Date	01/11/2011	Foreign Priority Date	NONE
Word Mark	AIRWALK		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2005/03/01 First Use In Commerce: 2005/03/01 protective helmets, sunglass cases, goggles for sports

U.S. Registration No.	3902942	Application Date	02/01/2010
Registration Date	01/11/2011	Foreign Priority Date	NONE
Word Mark	AIRWALK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2005/03/01 First Use In Commerce: 2005/03/01 Sporting goods, namely, snowboard leashes, skateboards, body boards, surf boards, inline skates		


U.S. Registration No.	3325504	Application Date	09/30/2002
Registration Date	10/30/2007	Foreign Priority Date	NONE
Word Mark	AIRWALK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Stickers		


U.S. Registration No.	4455302	Application Date	05/14/2010
Registration Date	12/24/2013	Foreign Priority	NONE

		Date	
Word Mark	AIRWALK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2010/08/01 First Use In Commerce: 2010/08/01 Wholesale distributorship services featuring footwear, clothing, sporting goods, and related accessories; retail store services featuring footwear, clothing, sporting goods and related accessories; computerized on-line retail store services in the field of footwear, clothing and accessories accessible via global computer networks		


U.S. Registration No.	4451783	Application Date	09/16/2011
Registration Date	12/17/2013	Foreign Priority Date	NONE
Word Mark	AIRWALK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 2012/10/01 First Use In Commerce: 2012/10/01 Watches		


U.S. Registration No.	3577081	Application Date	06/07/2007
Registration Date	02/17/2009	Foreign Priority Date	NONE
Word Mark	AIR WALK		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2007/07/01 First Use In Commerce: 2007/07/01 Sunglasses for sports Class 012. First use: First Use: 2007/07/01 First Use In Commerce: 2007/07/01 Bicycles; bicycle parts and accessories, namely, forks, seats and pedals Class 018. First use: First Use: 1998/08/01 First Use In Commerce: 1998/08/01 Athletic and sports bags, duffel bags, backpacks, handbags, school bags, luggage, fanny packs, hand bags, travel bags, gym bags, shoulder bags, book bags, messenger bags, school bags and purses


U.S. Registration No.	4368631	Application Date	01/16/2013
Registration Date	07/16/2013	Foreign Priority Date	NONE
Word Mark	AIRWALK KICKS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2009/04/13 First Use In Commerce: 2009/04/13 Footwear		


U.S. Registration No.	3790244	Application Date	11/05/2009
Registration Date	05/18/2010	Foreign Priority Date	NONE
Word Mark	A AIRWALK UNSIGNED HERO		

Design Mark	 The logo features a stylized letter 'A' within a circle, positioned to the left of the word 'AIRWALK'. Below this, the words 'Unsigned Hero' are written in a large, ornate, gothic-style font with elaborate flourishes.
Description of Mark	The mark consists of a design element comprising a stylized letter "A" within a circle positioned to the left of the term "AIRWALK", both positioned above the terms "UNSIGNED" and "HERO" in stylized form.
Goods/Services	Class 041. First use: First Use: 2009/03/01 First Use In Commerce: 2009/03/01 Arranging, sponsoring and conducting contests and award programs in the field of sports and music

U.S. Registration No.	4301674	Application Date	01/05/2010
Registration Date	03/12/2013	Foreign Priority Date	NONE
Word Mark	A AIRWALK DOING YOUR PART		
Design Mark	 The logo features a stylized letter 'A' formed by two hands, with the word 'AIRWALK' in a bold, sans-serif font and 'DOING YOUR PART' in a smaller, lighter font to the right.		
Description of Mark	The mark consists of a pair of hands forming the letter "A", with the words "AIRWALK" and "DOING YOUR PART" to the right of the hands.		
Goods/Services	Class 035. First use: First Use: 2009/11/01 First Use In Commerce: 2009/11/01 Advertising of, namely, contests, award programs, non-profit events and cultural activities, all affiliated with the fields of sports and music		

U.S. Registration No.	3902890	Application Date	01/07/2010
Registration Date	01/11/2011	Foreign Priority Date	NONE

Word Mark	AIRWALK DOING YOUR PART
Design Mark	
Description of Mark	The mark consists of a pair of hands forming the letter "A", with the words "AIRWALK" and "DOING YOUR PART" to the right of the hands.
Goods/Services	Class 041. First use: First Use: 2009/11/03 First Use In Commerce: 2009/11/03 Arranging, sponsoring, and conducting contests and award programs with culturalactivities and within the fields of sports and music

U.S. Registration No.	3902891	Application Date	01/07/2010
Registration Date	01/11/2011	Foreign Priority Date	NONE
Word Mark	AIRWALK DOING YOUR PART		
Design Mark			
Description of Mark	The mark consists of a pair of hands forming the letter "A", with the words "AIRWALK" and "DOING YOUR PART" to the right of the hands.		

Goods/Services	Class 036. First use: First Use: 2009/11/03 First Use In Commerce: 2009/11/03 Charitable fundraising service, namely, providing aid to victims of natural disasters; financial sponsorship of athletes
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Tamar Duvdevani/
Name	ABG Collective LLC
Date	08/26/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Serial No. 86/459,048

Mark: AIRWALK

Published: April 28, 2015

ABG COLLECTIVE LLC,

Opposer,

v.

ATMOS NATION LLC,

Applicant.

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Opposition No.

Mark: AIRWALK

NOTICE OF OPPOSITION

U.S. Patent and Trademark Office

P.O. Box 1451

Alexandria, VA 22313-1451

Sir:

Opposer **ABG COLLECTIVE LLC**, a Delaware corporation, located at 100 West 33rd Street, New York, NY 10001, will be damaged by the registration of the mark AIRWALK (Application Serial No. 86/459,048) (the “Application”), filed November 19, 2014, by Atmos Nation LLC (hereinafter “Applicant”), published in the Official Gazette of the United States Patent and Trademark Office on April 28, 2015, and hereby opposes the registration of such mark. The time to oppose was extended by a timely request for extension of time to file this opposition.

The grounds for the opposition are as follows:

OPPOSER AND ITS RIGHTS IN THE AIRWALK MARK

1. Opposer owns a vast portfolio of marks related to AIRWALK, which is a skater, BMX, and board-culture brand established almost 30 years ago.

2. Well prior to the filing date of Applicant's intent-to-use application for AIRWALK, Opponent began using AIRWALK, a skater, bmx and board-culture brand used for and to promote action sports, with notable endorsements by sports superstars like Jason Lee and Tony Hawk.





3. Since at least 1989, Opposer and its predecessors-in-interest have continuously used the mark AIRWALK in interstate commerce in connection with a wide range of goods and services, including, but not limited to footwear, apparel, sporting goods, and equipment, and in connection with sporting events and for retail store services related to the same.

4. Beginning in 1995, almost twenty years prior to the November 19, 2014 date of Applicant's intent-to-use Application, the Opponent and its predecessors launched the website www.airwalk.com to promote the AIRWALK brand internationally.

5. When used in connection with Opposer's footwear and its other products, the AIRWALK mark is inherently distinctive. Although not necessarily because of the mark's inherent distinctiveness, the AIRWALK mark has also acquired secondary meaning by reason of Opposer's extensive advertising, promotion and other uses thereof.

6. Moreover, Opposer is the owner of the following United States Trademark Registrations for the AIRWALK mark:

Trademark	Number	Date of Registration	Class	Goods
AIRWALK	1511840 (Registered)	November 8, 1988	25	Athletic and exercise shoes.
AIRWALK	2109810 (Registered)	October 28, 1997	25	Outerwear, namely coats, jackets, hats, shirts, pants, shorts, socks, and[belts]; shoes, namely mountain bike shoes, hiking boots, and snowboard boots
AIRWALK	2314004 (Registered)	February 1, 2000	25	Footwear, namely casual shoes.
AIRWALK	3902941 (Registered)	January 11, 2011	9	Protective helmets, sunglass cases, goggles for sports.
AIRWALK	3902942 (Registered)	January 11, 2011	28	Sporting goods, namely, snowboard leashes, skateboards, body boards, surf boards, inline skates.
AIRWALK	3325504 (Registered)	October 30, 2007	16	Stickers.
AIRWALK	4455302 (Registered)	December 24, 2013	35	Wholesale distributorship services featuring footwear, clothing, sporting goods, and related accessories; retail store services featuring footwear, clothing, sporting goods and related accessories; computerized on-line retail store services in the field of footwear, clothing and accessories accessible via global computer networks.
AIRWALK	4451783 (Registered)	December 17, 2013	14	Watches.
AIR WALK	3577081 (Registered)	February 17, 2009	9, 12, 18	9: Sunglasses for sports. 12: Bicycles; bicycle parts and accessories, namely, forks, seats and pedals. 18: Athletic and sports bags, duffel bags, backpacks,

				handbags, school bags, luggage, fanny packs, hand bags, travel bags, gym bags, shoulder bags, book bags, messenger bags, school bags and purses.
AIRWALK KICKS	4368631 (Registered)	July 16, 2013	25	Footwear.
A AIRWALK UNSIGNED HERO & Design 	3790244 (Registered)	May 18, 2010	41	Arranging, sponsoring and conducting contests and award programs in the field of sports and music.
A AIRWALK DOING YOUR PART & Design 	4301674 (Registered)	March 12, 2013	35	Advertising of, namely, contests, award programs, non-profit events and cultural activities, all affiliated with the fields of sports and music.
AIRWALK DOING YOUR PART & Design 	3902890 (Registered)	January 11, 2011	41	Arranging, sponsoring, and conducting contests and award programs with cultural activities and within the fields of sports and music.
AIRWALK DOING YOUR PART & Design 	3902891 (Registered)	January 11, 2011	36	Charitable fundraising service, namely, providing aid to victims of natural disasters; financial sponsorship of athletes.

7. Opposer's foregoing registrations for the mark AIRWALK are valid, subsisting, and many are incontestable pursuant to 15 U.S.C. § 1065.

8. Opposer has used and is using the AIRWALK mark in interstate commerce in connection with the goods and services described in the Opposer's Registrations.

9. As a result of widespread advertising and promotion by Opposer and its predecessors, Opposer's AIRWALK mark has acquired a high degree of recognition, fame, and distinctiveness in the United States prior to the date of Applicant's Application.

COUNT I
THERE IS A LIKELIHOOD OF CONFUSION WITH OPPOSER'S MARK

10. Opposer realleges paragraphs 1 through 9 as paragraph 10 of this Count I.

11. On November 19, 2014, Applicant filed the Application for the mark "AIRWALK" for "Electronic cigarettes; Electronic cigars; Electronic hookahs; Electronic smoking pipes; Mechanical electronic cigarettes; Smokeless cigarette vaporizer pipe" in Class 34 based on an intent to use the mark in the United States.

12. Opposer began using AIRWALK in interstate commerce almost thirty years prior to the filing date of Applicant's intent-to-use application for AIRWALK.

13. The grant of a registration to Applicant for its "AIRWALK" mark as sought in the Application should be denied on the grounds of Opposer's prior use of the AIRWALK mark. The mark sought to be registered by Applicant is identical in sound, spelling, and commercial impression to Opposer's AIRWALK mark, and the use of the "AIRWALK" mark by Applicant is likely to cause confusion or mistake in the minds of the public and to lead the public and prospective purchasers to believe that Applicant's goods are those of Opposer or are endorsed, sponsored or otherwise affiliated or connected with Opposer, or that Opposer's goods and services are associated with Applicant, all to the damage and injury of the purchasing public and to the damage and injury of Opposer.

14. The grant of a registration to Applicant for its “AIRWALK” mark as sought in the Application, should be denied based on likelihood of confusion with Opposer’s prior AIRWALK mark.

COUNT II
THE APPLICATION DILUTES BY BLURRING OPPOSER’S MARK

15. Opposer realleges paragraphs 1 through 14 as paragraph 15 of this Count II.

16. Through extensive advertising and promotion, Opposer’s AIRWALK mark has become and is a famous mark in the United States. Opposer’s AIRWALK mark had become famous prior to November 19, 2014.

17. Opposer began using AIRWALK in interstate commerce almost thirty years prior to the filing date of Applicant’s intent-to-use application for AIRWALK, and Opposer’s AIRWALK mark had also already become famous prior to the filing date of the Application.

18. Applicant’s use of the “AIRWALK” mark will cause and is likely to cause dilution of Opposer’s AIRWALK Mark by blurring.

19. Applicant’s use of the “AIRWALK” mark will cause injury to Opposer by lessening the capacity of the AIRWALK mark to identify and distinguish Opposer’s goods and services and by diluting the distinctive quality of Opposer’s famous mark.

20. The grant of a registration to Applicant for its “AIRWALK” mark as sought in the Application, should be denied based on likelihood of confusion with Opposer’s prior AIRWALK mark and dilution by blurring of Opposer’s famous AIRWALK mark.

COUNT III
THE APPLICATION DILUTES BY TARNISHMENT OPPOSER'S MARK

21. Opposer realleges paragraphs 1 through 20 as paragraph 21 of this Count III.

22. Through extensive advertising and promotion, Opposer's AIRWALK mark has become and is a famous mark in the United States.

23. Opposer began using AIRWALK in interstate commerce almost thirty years prior to the filing date of Applicant's intent-to-use application for AIRWALK, and Opposer's AIRWALK mark had also already become famous prior to the filing date of the Application.

24. Applicant's use of its "AIRWALK" mark as sought in the application will cause injury to Opposer by lessening the positive reputation of Opposer's famous AIRWALK mark.

25. As a skater, bmx and board-culture brand that is used for and to promote action sports, Opposer's AIRWALK mark is primarily used in association with athletic footwear, apparel, accessories, and sporting goods and equipment as well as sporting events, including sponsorships of sporting events such as, by way of example the Dew Tour, an annual summer sports event for extreme sports and the World Surf League's AIRWALK Pro Junior competition. The target customers for the AIRWALK brand are children, young adults, and youthful people who support board culture and value an active, healthy lifestyle. Opposer's AIRWALK mark is closely associated with board sports, active lifestyles, and peak athletic performance, as evidenced by its sponsorship of many professional skaters over the years, including world-renowned athlete Tony Hawk.

26. Applicant's proposed use and registration of AIRWALK in connection with electronic cigarettes, tobacco and nicotine products, and other paraphernalia such as vaporizers,

electronic hookahs, and electronic pipes -- often associated with illegal drugs -- would be particularly damaging to the reputation of Opposer's AIRWALK mark, as Applicant's proposed "AIRWALK" mark is identical to Opposer's AIRWALK mark and promotes goods that are inherently harmful and unhealthy, and as a result would contradict, degrade the positive association with Opponent's famous AIRWALK mark, tarnish the reputation of Opposer's famous AIRWALK mark and/or otherwise lessen the capacity of Opponent to identify and distinguish its goods and services under its AIRWALK mark in violation of section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

27. The grant of a registration to Applicant for its "AIRWALK" mark as sought in the Application, should be refused based on likelihood of confusion with Opposer's prior AIRWALK mark, dilution by blurring, dilution by tarnishment and degradation of Opposer's famous AIRWALK mark.

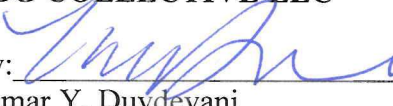
WHEREFORE, Opposer files this Notice of Opposition and prays that the aforesaid application of Atmos Nation LLC herein opposed, be rejected; that no registration be issued thereon to Applicant; and for such other and further relief as may be deemed just and proper.

The filing fees required for this Notice of Opposition should be charged to Deposit Account No. 194215. Please charge any additional fees, or credit any overpayment, to Deposit Account No. 194215. Please address all correspondence regarding this opposition to:

Tamar Y. Duvdevani
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1251 Avenue of the Americas
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(212) 335-4799
tamar.duvdevani@dlapiper.com

Respectfully submitted,

ABG COLLECTIVE LLC


By: 
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Gina L. Durham
Kerry A. O'Neill
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New York, NY 10020
(212) 335-4799
Attorneys for Opposer

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served via U.S. First Class Mail, postage prepaid, and properly addressed to Applicant's counsel of record:

Divya Khullar, Esq.
Managing Partner
www.USAPatent.com
4786 W. Commercial Blvd
Tamarac, Florida 33319

this 26th day of August, 2015.


Tamar Y. Duvdevani
Attorney for Opposer